IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2813 OF 2004

Maharashtra State Road Transport Corporation, Palghar Division, Parel, Bombay.).. Petitioner (Org.1st Party)

Vs.

Waman Pandurang Gaikwad, At- Vadha Bari, Post-Kohar, Tal. Peth, Dist. Nashik.).. Respondent

--

Shri G.S.Hegde for the petitioner.

Smt.Seema Sarnaik for the respondent.

--

CORAM : R.M.S.KHANDEPARKAR, J

DATED : 29th September, 2004.

Oral Judgment:

1. Heard the learned advocates for the parties.

2. Rule. By consent, the rule is made returnable forthwith.

3. The petitioner challenges the judgment and order dated 7th August, 2003 passed by the Labour Court, Nashik in Reference (IDA) No.45 of 1999.

4. The respondent herein was the employee of the petitioner and was working as Conductor. The

respondent having remained absent for the period from 19th January, 1996 to 23rd January, 1996, 30th January, 1996 to 31st January, 1996 and 1st February, 1996 to 14th March, 1996 was served with the chargesheet and inquiry was conducted against him. Based on the inquiry report, his services were terminated with effect from 30th September, 1996. Consequent to the dispute sought to be raised in the matter and on account of failure report by the concerned competent authority, the dispute was referred to adjudication in terms of the provisions of law contained in Section 10 read with Section 12 of the Industrial Disputes Act, 1947. The Labour Court, after hearing the parties, has arrived at the finding that the termination of the respondent was legal and justified, apart from the fact that the inquiry conducted was fair and proper. After arriving at the said finding, the Labour Court, however, directed the petitioner to give fresh employment to the respondent as Conductor in the S.T. Corporation, Nashik Division. The directions, in fact, read thus:

1. The workman is entitled to fresh employment as Conductor in the S.T.Corporation, Nashik Division.

2. The employer/first party is accordingly directed to appoint the workman/second party as fresh Conductor.

3. The workman is not entitled to reinstatement with continuity of service or back wages.

5. The impugned directions are challenged on the ground that the Labour Court having found the punishment of termination of the respondent from the service to be just and proper, could not have issued a direction for giving fresh employment to the respondent as Conductor in the S.T.Corporation. The learned advocate appearing for the respondent, on the other hand, has stated that the Labour Court, while taking lenient view in the matter pursuant to the application which was addressed to the petitioner by the respondent on 14th March, 1996 disclosing the reasons for his absence, has given the impugned directions, and therefore, in the facts and circumstances of the case, no fault could be found with such directions.

6. Bare perusal of the impugned judgment and

order discloses that the Labour Court, on the analysis of the materials on record and after hearing the parties, had arrived at the finding that the inquiry conducted by the petitioner was fair and proper and the findings arrived at by the Inquiry Officer were not perverse. The Labour Court has further arrived at the finding that the termination of the workman was legal and justified. In other words, apart from the fact that the inquiry having been found fair and proper, the findings arrived at by the inquiry officer were also found to be borne out from the records. The Labour Court found that the termination of the service of the respondent was proper and justified as the misconduct alleged against him was proved and punishment was not disproportionate to the proved misconduct. Once the Labour Court had arrived at the finding about the misconduct having been proved and the punishment was not disproportionate to the proved misconduct, the Labour Court had no occasion to interfere with the order passed by the employer against the workman as the law does not permit any such interference.

7. The learned advocate for the respondent has fairly conceded that once the Labour Court holds that the action taken by the employer to be just and

proper, the provisions of law do not empower the Labour Court to order reinstatement of the respondent / workman. Indeed, the provisions of law do not permit the Labour Court to issue any direction of the nature it had issued, once it was found that the punishment was not disproportionate to the proved misconduct. Bearing the same in mind, therefore, the impugned directions cannot be sustained and are liable to be quashed and set aside.

8. As rightly submitted by the learned advocate for the petitioner that, once the misconduct was proved and punishment was found not to be disproportionate, the question of taking lenient view or interference with the punishment imposed by the employer is not permissible for the Labour Court, and, therefore, on that count also, the said directions are not justified.

9. In the result, therefore, the petition succeeds and the impugned judgment and order to the extent it directs the petitioner to give fresh employment to the respondent as Conductor in S.T.Corporation is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

10. Authenticated copy be given to the parties.